IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.2158/1994.

Mahaveer Prasad Jain. **VERSUS** State of Raj. & Anr.

29.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.S.K.Singh]
Mr.Chandra Vijay Nathawat] for the petitioner.
Mr.V.P.Mathur, for the respondents.

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The petitioner in this writ petition has challenged the order of the Housing Board (Annexure-2) dated 01.11.1993 by which the registration of the petitioner for allotment and purchase of the house has originally made in the Hire Purchase Scheme was altered unilaterally by the Board to the Outright Payment Scheme.

Learned counsel for the parties submit that aforesaid controversy has come before this court earlier in the case of Smt.Vijay Laxmi Vs. The Rajasthan Housing Board & Another reported in 1994(1) WLC (Raj.) 534 wherein this court in the case of similar Scheme and in similar circumstances has held as follows:-

"15.It is thus evident that the Board is constituted under the Act of 1970 and is a Statutory Body. If there is an arbitrary decision, then irrespective of the fact that the petitioners have an efficacious alternate remedy, the writ jurisdiction could be invoked. Besides, this matter is likely to affect a big section of the society who are aggrieved by the action of the respondents. In the various advertisements and schemes issued from time to time including the General Registration Schemes and the Regulations, it is evident that the Board contemplated the registration in the categories of out-right sale as well as hire-purchase basis and the same is to be specified in the application form which the applicant is not entitled to change in a case from out-right basis to hire-purchase basis while the other is permissible. The facility which the HUDCO was providing to the Housing Board might not be available to it and may be available directly to the applicants, but, it is very much certain that the respondents are not exempt from their liability to carry out the representation which they have made in the schemes and advertisements issued and for any reason including the grounds of necessity or of expediency there cannot be any failure on their part to carry out the promises which they have made. I am not deciding the issue as to whether the facility for providing the houses on hire-purchase basis could be abolished altogether or not. But, in view of the Office Order of the respondent dated 20th December, 1991, in which it has been clarified that the decision of the Board dated 26.11.1991 shall be applicable only in respect of the registrations which are affected after 1st January, 1992, it is not a matter of contract alone, but is for resiling (by) the respondents from the promises which they have given to the needy persons while submitting their application for registration and is based on the doctrine of promissory estoppel as well as on the doctrine of legitimate expectation. The equity is in favour of the petitioner. The various factors which have been pointed out by the learned counsel for

the respondents are also taken into consideration so as not to affect their rights. In these circumstances, it is held:-

> (i) that the decision of the Board dated 26.11.1991 in respect of the policy of non allotment of houses on hire-purchase system would be applicable for registrations which have been done from 1.1.1992 in respect of Higher-income Group, Middle-income Group 'A' and Middle-income Group 'B' alone. However, no registration shall be cancelled of the applicants, if they have failed to make the payment on out-right basis and were registered giving their option for hire-purchase basis. The respondents would depute an Officer notifying to all the applicants, his name, place and time to contact him, who will assist the applicants in getting the loan sanctioned from HUDCO and other financial institutions. If such institutions are providing the loan, the applicants will have no objection in executing the documents and paying their charges as the said loan is provided on the lesser rate of interest and for a long period. If any applicant is not being granted the loan, then it would be the duty of the respondent to allot the house on hire-purchase basis. If the applicant is not eligible on account of any fraud, mis-representation or any other reason like, registration having been obtained, in two cities etc. the respondent would be free to cancel the registration in accordance with law. The allotment in the categories other than Higher-income Group, Middle-income Group 'A' and 'B' on hire-purchase basis shall not be denied. The respondent would be under duty to provide fully facility to the petitioners in assisting to get the loan from the financial institutions on their failure to provide the facility by themselves. The writ petition stand disposed of in accordance with the above directions."

Since the present controversy is covered by the aforesaid decision, this writ petition is also decided in the identical terms with similar directions as in the case of Smt.Vijay Laxmi (supra).

Consequently, the writ petition as well as the stay application stand disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.